

IN THE DISTRICT COURT OF CARTER COUNTY
STATE OF OKLAHOMA

FILED

IN DISTRICT COURT

NOV 25 2014

AT _____ o'clock _____ for
KAREN VOLINO, Court Clerk
Carter County, Oklahoma

RONALD J. HILLIAR, an Individual,

PLAINTIFF,

V.

Case No. CJ-2013-265

HUNTER HEAT & AIR, LLC, a
domestic limited liability company,
TONY REID, d/b/a TONY'S HVAC
SERVICE, an Oklahoma entity,
ALLIED AIR ENTERPRISES, LLC, a
Foreign Company, CONCORD
CHEMICAL, INC., a Foreign
Corporation; AEROPRES
CORPORATION, a Foreign
Corporation; ENVIRO-SAFE
REFRIGERANTS, INC., a Foreign
Corporation.

Defendants.

AND

CONCORD CHEMICAL, INC., a Foreign
Corporation,

Third-Party Plaintiff,

V.

ENVIRO-SAFE REFRIGERANTS, INC.; and
AEROPRES CORPORATION,

Third-Party Defendants.

FOURTH AMENDED PETITION

Plaintiff, for his cause of action against the Defendants, alleges and states as follows:

FIRST CAUSE OF ACTION

1. Plaintiff hired Defendant Hunter Heat & Air, LLC ("Hunter") to install a Lennox/Allied Air Enterprises exterior HVAC unit on or about July 4, 2012. The unit was installed at Plaintiff's place of business, the Archer's Den, located in Ardmore, Oklahoma.

2. On or about August 5, 2013, Defendant Hunter performed work on Plaintiff's exterior HVAC unit. Hunter was scheduled to come back out the next day (August 6, 2013) and service the unit.

3. On August 6, 2013, Plaintiff went out to observe the exterior HVAC unit in order to determine if any work had yet been performed. While Plaintiff was standing near the unit, the unit exploded, severely burning Plaintiff.

4. Tony Reid, d/b/a Tony's HVAC Service ("Tony's HVAC") serviced the interior HVAC unit on August 4 and 5, 2013.

5. Plaintiff is an Oklahoma resident.

6. Defendant, Hunter, is an Oklahoma Limited Liability Company.

7. Tony Reid/Tony's HVAC is an individual Oklahoma resident, doing business as an Oklahoma company.

8. This action is not removable.

9. The exterior HVAC Unit is a Lennox/Allied Air Enterprises 3-phase 230v, model # 2SCU13LC160T-1.

10. The Defendants, Hunter and Tony's HVAC were negligent, in one or more of the following particulars, including but not limited to:

a. Failing to use ordinary care to properly install and maintain the exterior HVAC Unit;

- b. Failing to properly train staff regarding the proper methods to install and service the exterior HVAC Unit;
- c. Failing to warn Plaintiff of the dangerous exterior HVAC Unit;
- d. Failing to leave the Unit in a condition that was safe for individuals to be around;
- e. Failing to install and use proper components in the exterior HVAC Unit;
- f. Failing to use ordinary care to keep Plaintiff from becoming injured.

11. As a direct result of the negligence of Defendants, Hunter and Tony's HVAC, the Plaintiff was injured. Plaintiff claims damages for physical pain and suffering, past and future, mental pain suffering, past and future, lost wages, loss of earning capacity, business losses, disfigurement, permanent injury and for the reasonable and necessary medical expenses, past and future. Plaintiff claims damages in excess of Seventy-Five Thousand Dollars (\$75,000).

12. The actions and omissions on the part of Defendants Hunter and Tony's HVAC constitute gross negligence and were in reckless disregard for the rights of others. In addition to actual damages, Plaintiff seeks recovery of exemplary, or punitive damages against Defendants Hunter and Tony's HVAC as a penalty or by way of punishment in an amount commensurate with the nature of the wrong, the character of conduct involved, the degree of culpability of the wrongdoer, the situation and sensibilities of the parties concerned, and the extent to which such conduct offends a public sense of justice.

WHEREFORE, Plaintiff prays for judgment against the Defendants, Hunter and Tony's HVAC, for damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), for punitive damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), for

reasonable attorney's fee and costs, and for such other relief which this Court deems just, equitable and proper.

SECOND CAUSE OF ACTION

13. The Defendant, Allied Air Enterprises, LLC, designed, manufactured, marketed, warranted, distributed, and sold the Lennox/Allied Air Enterprises exterior HVAC Unit ("injury producing product") that caused Plaintiff's injuries.

14. Plaintiff's injuries and harm were the direct and proximate result of defects in the design, material, manufacture, workmanship, marketing, and sale of the injury producing product. Said defects caused the injury producing product to be unreasonably dangerous and constituted misrepresentations of safety and breach of implied and express warranties, for which Defendants are strictly liable.

15. Defendants are strictly liable under the Oklahoma doctrine of Manufacturer Product Liability.

16. Plaintiff's injuries and harm were the direct and proximate result of the carelessness and negligence, gross negligence, recklessness, and willful and wanton conduct of the Defendants. Each Defendants' acts, individually, by and through its agents, servants, and employees, acting within the scope of their employment, jointly, severally, concurrently, and in concert, were negligent in that Defendants:

- a. Did not adequately inspect, examine, and test the injury producing product;
- b. Did not adequately manufacture the injury producing product to provide safety in reasonably foreseeable uses;
- c. Did not adequately instruct and warn product owners and operators regarding

- proper assembly, maintenance, safe use, and failures of the injury producing product;
- d. Failed to design the injury producing product to function properly under reasonable use;
- e. Failed to instruct, caution, and post adequate warnings for owners and operators of the injury producing product; and
- f. Failed to meet the applicable standards of reasonable conduct and breached duties owed with regard to the injury producing product.

17. As a direct result of the Defendants' negligence, misrepresentations, and breach of duties, Plaintiff, was severely injured. Plaintiff claims damages for physical pain and suffering, past and future, mental pain suffering, past and future, lost wages, loss of earning capacity, business losses, disfigurement, permanent injury and for the reasonable and necessary medical expenses, past and future. Plaintiff claims damages in excess of Seventy-Five Thousand Dollars (\$75,000.00).

18. Plaintiff alleges that the conduct of the Defendants was wanton and reckless and Plaintiff claims punitive damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00).

WHEREFORE, Plaintiff prays for judgment against all Defendants for damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), for punitive damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), for reasonable attorney's fee and costs, and for such other relief which this Court deems just, equitable and proper.

THIRD CAUSE OF ACTION

19. The Defendant, Concord Chemical, Inc. designed, manufactured, marketed, warranted, distributed, and sold Maxi-Frig MX-22a ("Maxi-Frig"), a refrigerant that caused Plaintiff's injuries.

20. Plaintiff's injuries and harm were the direct and proximate result of defects in the design, material, manufacture, workmanship, marketing, and sale of Maxi-Frig. Said defects caused Maxi-Frig to be unreasonably dangerous and constituted misrepresentations of safety and breach of implied and express warranties, for which Defendants are strictly liable.

21. Defendants are strictly liable under the Oklahoma doctrine of Manufacturer Product Liability.

22. Plaintiff's injuries and harm were the direct and proximate result of the carelessness and negligence, gross negligence, recklessness, and willful and wanton conduct of the Defendants. Each Defendants' acts, individually, by and through its agents, servants, and employees, acting within the scope of their employment, jointly, severally, concurrently, and in concert, were negligent in that Defendants:

- a. Did not adequately inspect, examine, and test the Maxi-Frig product;
- b. Did not adequately manufacture Maxi-Frig to provide safety for reasonably foreseeable uses;
- c. Did not adequately instruct and warn product owners and operators regarding safe use of the Mai-Frig product, including its inability to serve as a drop in replacement for HVAC systems currently using R-22 refrigerant and its inability to be used in non-commercial HVAC systems;

- d. Did not adequately instruct and warn product owners and operators about Maxi-Frig's chemical composition causing it to burn and/or explode under various conditions;
- e. Did not adequately instruct and warn product owners and operators that Maxi-Frig is not approved by the EPA to be used as a refrigerant in HVAC equipment designed for use with R-22 refrigerants;
- f. Failed to design the Maxi-Frig product to function properly under reasonable use, including as a replacement for HVAC systems currently using R-22 refrigerant and within residential HVAC systems;
- g. Failed to instruct, caution, and post adequate warnings for owners and operators regarding the dangerous characteristics of the Maxi-Frig product; and
- h. Failed to meet the applicable standards of reasonable conduct and breached duties owed with regard to the Maxi-Frig product.

23. As a direct result of the Defendants' negligence, misrepresentations, and breach of duties, Plaintiff, was severely injured. Plaintiff claims damages for physical pain and suffering, past and future, mental pain suffering, past and future, lost wages, loss of earning capacity, business losses, disfigurement, permanent injury and for the reasonable and necessary medical expenses, past and future. Plaintiff claims damages in excess of Seventy-Five Thousand Dollars (\$75,000.00).

24. Plaintiff alleges that the conduct of the Defendants was wanton and reckless and Plaintiff claims punitive damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00).

FOURTH CAUSE OF ACTION

25. The Defendant, Aeropres Corporation ("Aeropres") designed, manufactured, marketed, warranted, distributed, and sold the refrigerant that caused Plaintiff's injuries.

26. Plaintiff's injuries and harm were the direct and proximate result of defects in the design, material, manufacture, workmanship, marketing, and sale of the refrigerant. Said defects caused the refrigerant to be unreasonably dangerous and constituted misrepresentations of safety and breach of implied and express warranties, for which Defendants are strictly liable.

27. Defendants are strictly liable under the Oklahoma doctrine of Manufacturer Product Liability.

28. Plaintiff's injuries and harm were the direct and proximate result of the carelessness and negligence, gross negligence, recklessness, and willful and wanton conduct of the Defendants. Each Defendants' acts, individually, by and through its agents, servants, and employees, acting within the scope of their employment, jointly, severally, concurrently, and in concert, were negligent in that Defendants:

- a. Did not adequately inspect, examine, and test the refrigerant;
- b. Did not adequately manufacture the refrigerant to provide safety for reasonably foreseeable uses;
- c. Did not adequately instruct and warn product owners and operators regarding safe use of the refrigerant product, including its inability to serve as a drop in replacement for HVAC systems currently using R-22 refrigerant and its inability to be used in non-commercial HVAC systems;
- d. Did not adequately instruct and warn product owners and operators about the

refrigerant's chemical composition causing it to burn and/or explode under various conditions;

- e. Did not adequately instruct and warn product owners and operators that the refrigerant product is not approved by the EPA to be used as a refrigerant in HVAC equipment designed for use with R-22 refrigerants;
- f. Failed to design the refrigerant product to function properly under reasonable use, including as a replacement for HVAC systems currently using R-22 refrigerant and within residential HVAC systems;
- g. Failed to instruct, caution, and post adequate warnings for owners and operators regarding the dangerous characteristics of the refrigerant product; and
- h. Failed to meet the applicable standards of reasonable conduct and breached duties owed with regard to the refrigerant product.

29. The Defendants are negligent per-se for violating various statutes and federal regulations.

30. As a direct result of the Defendants' negligence, misrepresentations, and breach of duties, Plaintiff was severely injured. Plaintiff claims damages for physical pain and suffering, past and future, mental pain suffering, past and future, lost wages, loss of earning capacity, business losses, disfigurement, permanent injury and for the reasonable and necessary medical expenses, past and future. Plaintiff claims damages in excess of Seventy-Five Thousand Dollars (\$75,000.00).

31. Plaintiff alleges that the conduct of the Defendants was wanton and reckless and Plaintiff claims punitive damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00).

FIFTH CAUSE OF ACTION

32. The Defendant, Enviro-Safe Refrigerants, Inc. ("Enviro") designed, manufactured, marketed, warranted, distributed, and sold the refrigerant that caused Plaintiff's injuries.

33. The refrigerant at issue is a highly flammable liquefied petroleum gas that is not approved for HVAC units designed to use R-22, commonly known as Freon.

34. Plaintiff's injuries and harm were the direct and proximate result of defects in the design, material, manufacture, workmanship, marketing, and sale of the refrigerant. Said defects caused the refrigerant to be unreasonably dangerous and constituted misrepresentations of safety and breach of implied and express warranties, for which Defendants are strictly liable.

35. Defendants are strictly liable under the Oklahoma doctrine of Manufacturer Product Liability.

36. Plaintiff's injuries and harm were the direct and proximate result of the carelessness and negligence, gross negligence, recklessness, and willful and wanton conduct of the Defendants. Each Defendants' acts, individually, by and through its agents, servants, and employees, acting within the scope of their employment, jointly, severally, concurrently, and in concert, were negligent in that Defendants:

- a. Did not adequately inspect, examine, and test the refrigerant;
- b. Did not adequately manufacture the refrigerant to provide safety for reasonably

foreseeable uses;

- c. Did not adequately instruct and warn product owners and operators regarding safe use of the refrigerant product, including its inability to serve as a drop in replacement for HVAC systems currently using R-22 refrigerant and its inability to be used in non-commercial HVAC systems;
- d. Did not adequately instruct and warn product owners and operators about the refrigerant's chemical composition causing it to burn and/or explode under various conditions;
- e. Did not adequately instruct and warn product owners and operators that the refrigerant product is not approved by the EPA to be used as a refrigerant in HVAC equipment designed for use with R-22 refrigerants;
- f. Failed to design the refrigerant product to function properly under reasonable use, including as a replacement for HVAC systems currently using R-22 refrigerant and within residential HVAC systems;
- g. Failed to instruct, caution, and post adequate warnings for owners, operators and end users regarding the dangerous characteristics of the refrigerant product; and
- h. Failed to meet the applicable standards of reasonable conduct and breached duties owed with regard to the refrigerant product.
- i. Misrepresented to its customers and end users that R-22a is safe and appropriate for use as a drop in replacement for HVAC systems designed for R-22.

- j. Failed to warn its customers that R-22a is highly flammable and dangerous, despite being aware of several prior incidents wherein R-22a ignited and exploded causing injury to individuals and property;
- k. Misrepresented to customers, product owners, operators and end users that R-22a is a recognized refrigerant that is safe to use in residential and business applications;
- l. Failed to disclose that R-22a is actually R-290, or a derivative of the same, and is a class 3 refrigerant which is highly flammable;

37. The Defendants are negligent per-se for violating various statutes and federal regulations.

38. As a direct result of the Defendants' negligence, misrepresentations, and breach of duties, Plaintiff was severely injured. Plaintiff claims damages for physical pain and suffering, past and future, mental pain suffering, past and future, lost wages, loss of earning capacity, business losses, disfigurement, permanent injury and for the reasonable and necessary medical expenses, past and future. Plaintiff claims damages in excess of Seventy-Five Thousand Dollars (\$75,000.00).

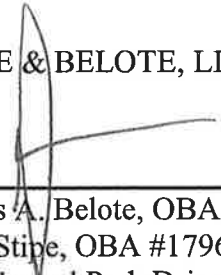
39. Plaintiff alleges that the conduct of the Defendants was wanton and reckless and Plaintiff claims punitive damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00).

WHEREFORE, Plaintiff prays for judgment against all Defendants for damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), for punitive damages in an

amount in excess of Seventy-Five Thousand Dollars (\$75,000), for reasonable attorney's fee and costs, and for such other relief which this Court deems just, equitable and proper.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

ATTORNEY'S LIEN CLAIMED

CERTIFICATE OF MAILING

The undersigned certifies that on this 20th day of November 2014, a true and correct copy of the above and foregoing was mailed to:

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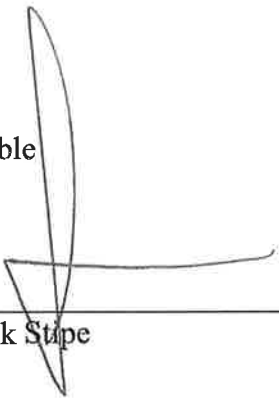
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